

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 6736	DATE	6/10/2004
CASE TITLE	Linea Internacional De Credito vs. Western Union Financial Services, Inc.		

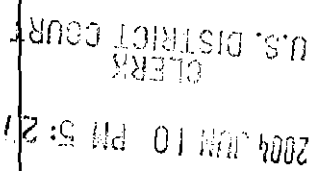

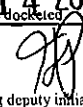
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] For the foregoing reasons, defendant's motion to dismiss the complaint is granted. The complaint is dismissed without prejudice. Plaintiff is given until July 1, 2004 to file an amended complaint if it believes it can do so in accordance with this opinion. If plaintiff does not file an amended complaint within that time period, the cause will be dismissed with prejudice.
(11)	<input type="checkbox"/>	[For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		number of notices	Document Number 
<input type="checkbox"/>	No notices required.		JUN 14 2004 date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		 docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		6/10/2004 date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		KM	
<input type="checkbox"/>	Mail AO 450 form.		mailing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.			
KM courtroom deputy's initials		Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINEA INTERNACIONAL DE CREDITO,)
S.A., an Ohio corporation,)
)
 Plaintiff,)
)
 v.)
)
WESTERN UNION FINANCIAL SERVICES,)
INC.,)
)
 Defendant.)

No. 03 C 6736

DOCKETED

JUN 14 2004

MEMORANDUM OPINION

Before the court is defendant's motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons explained below, the motion is granted.

BACKGROUND

Plaintiff Linea Internacional de Credito, S.A. ("LIC") brings this action against Western Union Financial Services, Inc. ("Western Union"), alleging the violation of antitrust laws.

The following facts are drawn from the complaint and taken as true for purposes of this motion. LIC provides financial services and does business under the names "Worldwide Financial Services" and "Worldwide Cash Card Company." Its customers are individuals in the United States "who purchase [unspecified] goods and services from [primarily Internet] vendors located in the Caribbean, Central



and South America."¹ (Complaint, ¶ 5.) These customers require a means of paying for the goods and services purchased, and the vendors must be able to make refunds or other payments to the customers. According to LIC, Western Union is "the largest, best-known, and almost exclusive provider of money wire transfer services available to individuals in the United States." (Id., ¶ 6.)

On June 18, 1999, LIC and Western Union entered into an agreement pursuant to which Western Union would provide wire transfer services to LIC's customers for a flat fee of \$11.99 per transfer of \$5,000 or less. This arrangement facilitated Internet transactions between LIC's customers and Caribbean vendors. As a result of the agreement, LIC began to market its financial services, gain new customers, and establish relationships with Caribbean vendors. Within two months, LIC became one of Western Union's largest customers.

On November 15, 1999, Western Union terminated the contract with LIC due to "suspicious activity." LIC sought an explanation. Western Union indicated that it had learned that some of the Caribbean vendors were online casinos, and that transactions between LIC's customers and these online casinos necessitated the termination of the contract.

^{1/} For simplicity, we will refer to these vendors as "Caribbean vendors," as does LIC.

LIC asserts that Western Union "used the gambling allegation as a pretext to cancel the contract," calculating that "it would make millions of dollars more if it could force [LIC's] customers to send money to The Caribbean for the hundreds of dollars Western Union charges individuals rather than the nominal sum of \$11.99 it had agreed to charge LIC customers for such transactions." (Complaint, ¶ 12.) Then, according to LIC, Western Union attempted to "eliminate all competition for the money transfer market." (Id.) "Within days Western Union established the Western Union Cash Card and The Western Union MasterCard program and entered into arrangements with the same online casinos that it alleged were engaging in 'suspicious activities' with LIC customers." (Id., ¶ 13.)

Because Western Union terminated the contract, LIC was unable to serve its customers and could not honor relationships with Caribbean vendors, thereby losing millions of dollars. There is no other provider of money wire transfer services available to LIC. The complaint also alleges that "millions of customers located throughout the United States . . . are deprived of a low cost alternative to the expensive wire transfer services offered by Western Union." (Complaint, ¶ 14.)

LIC asserts that Western Union violated the Sherman Act, 15 U.S.C. § 2, and the Clayton Act, 15 U.S.C. § 15. LIC seeks treble damages, attorney's fees and costs, and requests "[t]hat Western

Union be enjoined from refusing to provide the wire transfer services to which it agreed in the contract to LIC and its customers and vendors." (Complaint, Prayer for Relief, at 6.)

Western Union now moves to dismiss the complaint.

DISCUSSION

The purpose of a 12(b)(6) motion to dismiss is to test the sufficiency of the complaint, not to resolve the case on the merits. 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1356, at 294 (2d ed. 1990). When evaluating such a motion, the court must accept as true all factual allegations in the complaint and draw all reasonable inferences in the plaintiff's favor. Hentosh v. Herman M. Finch Univ. of Health Sciences, 167 F.3d 1170, 1173 (7th Cir. 1999); Jang v. A.M. Miller & Assocs., 122 F.3d 480, 483 (7th Cir. 1997). Dismissal is appropriate only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Ledford v. Sullivan, 105 F.3d 354, 356 (7th Cir. 1997) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)); Jones v. General Elec. Co., 87 F.3d 209, 211 (7th Cir.), cert. denied, 519 U.S. 1008 (1996).

Western Union first argues that LIC has no protectible legal interest and thus cannot assert an antitrust claim as a matter of law, citing Maltz v. Sax, 134 F.2d 2, 5-6 (7th Cir. 1943). In Maltz, the plaintiff manufactured and sold gambling devices called

"punchboards." He brought an action under the Sherman Act alleging that he was the victim of an unlawful combination and conspiracy. The district court granted defendants' motion to dismiss on the ground that the use and sale of punchboards was unlawful and against public policy. The Court of Appeals affirmed the dismissal, stating:

[T]he damages claimed were for an injury to something which the law did not recognize as a legal right. Plaintiff's business was the making and selling of goods which could only be used by purchasers in furtherance of the business of gambling. Plaintiff has no legal right in a business, the conduct of which was gambling, for which he may obtain protection either in an action at law, or by a suit in equity. He had no legal rights to protect. Therefore defendants could not invade them.

While the business of making and selling gambling machines is not in itself gambling, it is widely held that one who sells a gambling mechanism, useful for no business other than gambling, may not recover the purchase price of such gambling apparatus. More consistent with our general public policy is a construction of the Sherman Act, which holds that one conducting a business inseparably connected with gambling (such as making gambling machines) may not recover in an action at law for injury to its business through a competition-squeezing combination of his competitors.

Id. (citations omitted).

Western Union argues that Maltz forecloses LIC's claims. Maltz is distinguishable, however, because there, plaintiff's business was "the making and selling of goods which could only be used by purchasers in furtherance of the business of gambling" and was "inseparably connected with gambling." Id. (emphasis added). All that we can tell about LIC's business at this juncture, though,

is that Western Union asserted that "transactions between LIC customers and on-line casinos necessitated the termination of the Contract." (Complaint, ¶ 10.) It is not clear from the complaint that plaintiff's business is inseparably connected with gambling or that its services could only be used in furtherance of gambling.² Therefore, Maltz does not control.

Western Union also contends that LIC fails to state a claim under the Sherman and Clayton Acts. On this issue, we agree with Western Union. Section 2 of the Sherman Act, 15 U.S.C. § 2, proscribes monopolization and attempted monopolization of trade. Private civil actions to enforce the Sherman Act are allowed under the Clayton Act, 15 U.S.C. § 15. LIC alleges that Western Union "has monopolized the money wire transfer market available to individuals in the United States." (Complaint, ¶ 6.)

The elements of a monopolization claim under § 2 of the Sherman Act are that the defendant (1) has a monopoly in the relevant market; and (2) willfully acquired or maintained that monopoly through anti-competitive conduct as opposed to superior product, business acumen, or accident. See Endsley v. City of Chicago, 230 F.3d 276, 282 (7th Cir. 2000) (citing Eastman Kodak Co. v. Image Technical Servs., 504 U.S. 451, 481 (1992)). Although

^{2/} Western Union attaches an Ohio Trade Name Filing to its brief that indicates that LIC has a trade name, inter alia, of "Charitable Gaming Inc." Plaintiff uses other trade names as well, and this document simply does not tell us very much about the exact nature of plaintiff's business.

we cannot apply a heightened pleading standard in antitrust cases, "plaintiffs still must set forth facts sufficient to create an inference that defendant had enough market power to create a monopoly" in order to survive a motion to dismiss. Endsley, 230 F.3d at 282.

LIC fails to properly allege the first element of a Sherman Act claim--that defendant has a monopoly in a relevant market. In paragraph 5 of the complaint, plaintiff purports to define two markets: (1) "a market of customers located throughout the United States, including thousands of customers in the Northern District of Illinois, for inexpensive money wire transfer services to vendors located in The Caribbean"; and (2) a "similar market" of "vendors who sell goods and services to United States customers via the Internet who need to receive funds from said customers and, on occasion, make refunds or other payments to customers in the United States." The same paragraph includes an explanation of why plaintiff has excluded bank wire transfer services, credit cards, and checks from its definition of the relevant market.³ The complaint then goes on to allege that Western Union has monopolized

^{3/} Were plaintiff to have properly alleged a monopoly in the first market set forth in paragraph 5 of the complaint, we do not agree with defendant that the inclusion of the word "inexpensive" would render the market improperly defined as a matter of law. It is true that a legally sufficient product market must include products that have reasonable interchangeability for the purposes for which they are produced. See Rohlfing v. Manor Care, Inc., 172 F.R.D. 330, 345 (N.D. Ill. 1997). But plaintiff adequately sets forth allegations in paragraph 5 regarding why it did not include certain money transfer services in its definition. Therefore, we cannot say that its definition of the relevant market is improper as a matter of law. Rather, it is a question of fact that cannot be decided at the motion to dismiss stage.

only "the money wire transfer market available to individuals in the United States." (Id., ¶ 6.) Therefore, LIC's exact definition of the relevant market is unclear. Moreover, the facts set forth in the complaint are insufficient to permit an inference that Western Union had a monopoly in any market. The complaint alleges merely that "Western Union is the largest, best-known and almost exclusive provider of money wire transfer services available to individuals in the United States. As a result, Western Union has monopolized the money wire transfer market available to individuals in the United States." (Id. (emphasis added).) This non sequitur is insufficient to allege a monopoly.

LIC also fails to allege the second element of a Sherman Act claim--that Western Union willfully acquired or maintained monopoly power through anti-competitive conduct. The complaint fails to allege that Western Union engaged in conduct that was unjustified. Notably, LIC does not contend that Western Union was not entitled to terminate the contract or that its alleged conduct constituted a breach of contract. And, as defendant points out, even a monopolist has no duty to help its competitors. See Olympia Equip. Leasing Co. v. Western Union Tel. Co., 797 F.2d 370, 376 (7th Cir. 1986) ("A monopolist has no duty to reduce its prices in order to help consumers . . . and no duty to extend a helping hand to new entrants If a monopolist does extend a helping hand, though not required to do so, and later withdraws it as happened in

this case, does he incur antitrust liability? We think not.").

Because LIC fails to state a claim for antitrust violations, the complaint must be dismissed.

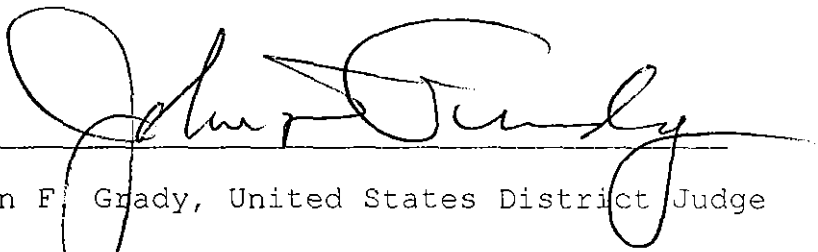
CONCLUSION

For the foregoing reasons, defendant's motion to dismiss the complaint is granted. The complaint is dismissed without prejudice.

Plaintiff is given until July 1, 2004 to file an amended complaint if it believes it can do so in accordance with this opinion. If plaintiff does not file an amended complaint within that time period, the cause will be dismissed with prejudice.

DATE: June 10, 2004

ENTER:



John F. Grady, United States District Judge